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Agenda item 6

REPORT ON OTHER MEETINGS AND ACTIVITIES

Note by the Secretariat

Addendum

Contribution by the National Commission for Human Rights (Mexico)

1. The attention of the Preparatory Committee is drawn to the attached document prepared by the National Commission for Human Rights (Mexico), entitled "Nearlt Three Years of Experience".

2. The document was prepared as a background paper for the United Nations meeting of representatives of national institutions and organizations promoting tolerance and racial harmony and combating racism and racial discrimination (Sydney, Australia, 19-23 April 1993) organized by the Centre for Human Rights in cooperation with the Australian Human Rights and Equal Opportunity Commission.

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SUMMARY

1.— Antecedents and creation of the National Commission for Human Rights (CNDH in Spanish). 2.— The CNDH takes on the role of OMBUDSMAN. 3.— The change in the CNDH's legal frame-work. 4.— Structure and functions of the CNDH. 5.— The CNDH's achievements and challenges.

1.— Antecedents and creation of the CNDH.

Ever since the beginning of the present Administration, it was obvious that Mexico needed to make progress in broadening and perfecting its juridical instruments so as to achieve a better defense and protection of Human Rights.

The governments's immediate response was to set up the Directorate General for Human Rights as part of the Ministry of the Interior. This new office would be in charge of attending to citizens complaints about violations of Human Rights and their basic guarantees and prerogatives. Thus, it was the closest antecedent to the National Commission for Human Rights.

Prior to that, at the local and municipal level, similar efforts had been made in some parts of the country, although in general they had no great radius of action, nor any really far—reaching effects on Mexican life. Such was the case of the Directorate for the Defense of Human Rights in Nuevo Leon (1979); the Office of the District Attorney for the Municipality of Colima (1983); The Office of the Attorney General for the Defense of Indians in Oaxaca (1986) and its counterpart in the State of Guerrero (1987).

Note: The opinions expressed in this paper are those of the authors.

Much more effective was the creation of the Office for the Defense of University Rights at the National Autonomous University of Mexico (1985) and the Office of the Attorney for the Protection of Citizens in Aguascalientes (1988), institutions which, moreover, had the great merit of opening up the way for the figure of the OMBUDSMAN outside purely academic circles.

In spite of these efforts, there was no substantial improvement in the country with regard to more effective respect for Basic Rights. The chronic spur to the problem became increasingly acute because of abuses committed in the struggle against drug—trakficking; there was a public outcry demanding that the State take rapid and vigorous action to put an end to this situation and reverse this pernicious trend.

Following the principles of full respect for basic guarantees; the decision to undertake an open and frontal attack on impunity, recognition that no one should be above the Law, and with the State honestly accepting that there were problems in enforcing Human Rights adequately, on the 5th of June 1990, the President issued a Decree creating the National Commission for Human Rights.

According to its terms, the National Commission was to be a decentralized agency of the Ministry of the Interior responsible for proposing and overseeing the implementation of national policy regarding the respect and defense of Human Rights. In order to carry out this task, it was authorized to instrument preventive mechanisms for, attend to, and coordinate efforts to safeguard, the Human Rights of Mexicans and foreigners within Mexican territory, the latter in coordination with the Ministry of Foreign Affairs. Very specifically, the CNDH was granted authorization to "draw up and carry out programs for attending to and following up complaints made by the public about Human Rights".

The National Commission was to be headed by a Chairman appointed by the President of the Republic, assisted by a Council made up of persons of recognized prestige from civil society, well—known in their sphere and capable of proposing instructions and guidelines for the institution's work.

With this juridical statute the National Commission started to work. As certainly happens whenever any Institution starts up, at the outset the CNDH's activities were far from simple. Criticism was the order of the day: there were some who considered that due to its decentralized nature the Commission would not have the independence required for really carrying out its responsibilities; others believed that the agency's sole mission would be to smarten up Mexico's image abroad, while still others thought it was but a fleeting fashion that would not last long.

However, large segments of civil society, encouraged by the prestige and independence of the person appointed as Chairman of the National Commission, gave their full support to the institution and generously granted it their vote of confidence which could be retracted, rectified or ratified if the facts should warrant it.

Confronted by this panorama of uncertainties, questionings, incredulities and expectations, the National Commission, on the basis of its daily work and its results, started to make a space for itself within the nation's legal circles.

2.— The CNDH takes on the role of OMBUDSMAN

The most urgent tasks confronting the National Commission, and which necessarily had to be carried out at once and at the same time, were those of starting to receive citizens complaints about violations of Human Rights and making the general measures contained in its founding Decree into a more complete and precise juridical instrument.

It was then that people began to talk more and more about having an OMBUDSMAN; an institution that was practically unknown not only to the common people in Mexico but also to the vast majority of the authorities and public servants. The general public was informed of its origins, its nature and its functions. In a great effort of dissemination, the similarities between the CNDH and this Swedish institution were analyzed, as were the differences between them and the role it might play in Mexican society.

Little by little the general public became convinced that the Mexican version of the OMBUDSMAN would not upset the country's juridical system, supplant any other agency or function, nor would it duplicate agencies, actions or procedures.

The CNDH's first recommendations started to penetrate into civil society thanks, among other things, to their dissemination by the mass media. Within a short time, the National Commission issued recommendations on some of the events that had outraged public opinion most, appealing for penal and administrative action against those responsible for violating Human Rights.

In various ways, the CNDH's recommendations had an impact on the country: many federal and local authorites, unaccustomed to this type of indication and public recommendations, although not necessarily coming out against the Commission's work, at least showed surprise and incredulity. Some even offered resistance. On the other hand, there was sufficient evidence that the CNDH as a semi—autonomous agency was only dependent administratively, while in its technical and functional dimension, the only truth was that stemming from the evidence confirmed in its files.

After intense working sessions by the Commission's Council, its Internal Rules and Regulations were approved and published in the Official Journal of the Federation on the 1st of August 1990, less than two months after the CNDH had begun its work.

The Internal Rules and Regulations stipulate that the National Commission is to function as an OMBUDSMAN, clearly defining its competence to receive complaints on alleged violations of Human Rights, investigate them and draw up recommendations in order to seek redress and punish those responsible for committing them.

It is competent to intervene in the following cases:

A) Violations, faulty procedures and crimes harming a person or group of people, committed by administrative authorities or public servants;

B) Violations, faulty procedures and crimes harming a person or group of people, committed by social agents, whose impunity stems from the reluctance or tolerance of an administrative authority or public servant;

C) In the cases referred to above, because of negligence imputable to some authority or public servant.

Complaints about matters of a jurisdictional, electoral or work—related nature, dealt with by OMBUDSMEN, are not included in the Commission's sphere of competence.

The procedure set up in the Internal Rules and Regulations for dealing with complaints was adapted to the procedures governing the OMBUDSMAN: easy access for complainants; absence of solemnity and formalism; obligation on the part of the authorities to provide reports; speedy presentation of proof; autonomous search for evidence; public recommendations or solution to the complaint by means of the mechanism of amiable settlement, conciliation or mediation.

The CNDH's actions were not limited to presenting the complaint, it also had authority to intervene officially. Likewise, as there was no institution for juridical assistance or legal aid in the country, the Internal Rules and Regulations stressed the CNDH's responsibility for providing legal counselling to complainants, even when the problems posed had nothing to do with violations of Human Rights.

The Decree setting up the Commission and the Internal Rules and Regulations established that the Chairman of the CNDH should inform the President of the Republic every six months on the actions taken to protect Human Rights, the recommendations served and the extent to which they had been complied with. At the end of the first semester, in December 1990, the report indicated that 1,343 complaints had been received; 33 recommendations had been served; 5 documents of non—responsibility had been sent to authorities originally indicated as having allegedly been responsible for such violations and, for different reasons, 397 files had been closed.

Since its very beginning, the responsibilities of the National Commission were much broader than the development of a Complaints Program; its activity also covers the areas of dissemination, publicity, training, early release benefits and more recently, special emphasis has been placed on prison matters; the search for and location of persons alleged to have disappeared in cases where it might be assumed that an authority or public servant was responsible for their disappearance; matters having to do with native Mexicans, international relations and legislative studies are among the most outstanding.

3.— The change in the CNDH's legal framework

Experience has demonstrated that the fact of having created the National Commission in the way it was done — that is to say, in a speedy but decided manner — turned out to be a better procedure than that which had originally been promoted; an amendment to the Constitution, an organic law or regulation then being derived from it. Apart from the fact that the Commission would have taken much longer before starting to act, its approval by the Authority for Revising the Constitution, and later by the Federal Congress, would have been much more difficult in view of the scant information and experience Mexico had on the subject of the OMBUDSMAN.

Of course, within the Commission itself, the relative weakness of its legal framework — explainable by the conditions in which it was set up — was fully recognized and from very early on a desire was expressed that the General Constitution of the Republic should recognize the existence of the institution.

Having gained the trust of large segments of society through the obvious proof of its real autonomy and independence, through testimony as to its utility and harmony with the Mexican juridical system, and with the experience accumulated over more than a year of intense and ceaseless work, the President of the Republic sent the Authority for Revising the Constitution a proposal to make the CNDH part of the Constitution.

On the 29th of January 1992, the Official Journal of the Federation published the addition to Article 102, Section B of the Constitution. The unusual fact that all the political parties represented in the Federal Congress voted in favor of this reform to the Constitution clearly showed that the path chosen was the correct one.

The basic principles or elements of this new constitutional measure are the following:

A) The system for the protection of Human Rights set out in Article 102, Section B, does not replace or eliminate any of the others foreseen in the General Constitution of the Republic; on the contrary, it enriches them and complements them with a new and different guarantee of Mexican constitutional justice, specifically within the domain of the constitutional jurisdiction of freedom, as Mauro Cappaletti called it.

B) The addition to the Constitution respects the State's federal structure, developing an eminently federalist scheme for the protection of Human Rights via an OMBUDSMAN.

Thus, each of the different States of the Federation will have an agency for protecting Human Rights, its characteristics being those set forth in the Constitution to deal with alleged violations of Human Rights on the part of authorities or public servants.

The national agency for protecting Human Rights (the CNDH) will receive, in the first and sole instance, alleged violations of basic rights committed by federal authorities or public servants.

C) The CNDH will act as the revisory organ for dealing with protests made in connection with the recommendations, agreements or omissions of the State agencies for the protection of Human Rights. That is to say, the national organism will be competent, in the first instance, in the case of violations committed by federal authorities or public servants and, in the second instance, in the case of State or municipal authorities or public servants, whenever a protest has been made in the terms established in its Organic Law. This system is clearly inspired by Mexico's own legal experience.

D) The recommendations formulated by the agencies for the protection of Human Rights, both at the national and State levels, will be autonomous; that is to say, they will be the outcome of the independence of the agency which, in order to arrive at conclusions, can only base itself on the force of the evidence and the convictions stemming from the proof.

The recommendations are of a non—binding character wich is precisely why they are called that. This means there is no possibility of applying them or enforcing them except if the authority or public servant on whom they are served are willing to do so.

E) Three subjects are outside the competence of the agencies for the protection of Human Rights: electoral, work—related and jurisdictional matters.

F) The National Commission for Human Rights cannot receive complaints on violations committed by authorities or public servants belonging to the Federal Judicial Power. This exception is of a global nature. That is to say, it can never deal with purely jurisdictional matters but, according to the terms of Article 102, neither can it if the nature of the violations is of an administrative order.

This exception, that was extensively debated by the Authority for Revising the Constitution, stems from the specific nature of the Federal Judicial Power which, in addition to its typically jurisdictional functions, is also the final authority for interpreting the Constitution.

Once the constitutional reform was approved, the Federal Executive started right away to present the bill on the National Commission for Human Rights. Finally, on the 29th of June, 1992, the Law was published in the Official Journal of the Federation.

Only one step remained to complete the renovation of the National Commission for Human Rights legal framework. This consisted of the council's approval of its Internal Rules and Regulations. This was done, and on the 12th of november of 1992, the Internal Rule of the National Commission for Human Rights, was published on the Official Journal of the Federation.

4.— Structure and functioning of the CNDN.

Apart from the importance of having a constitutional basis and legislative support and the permanent drive this meant for the institution, the new legislation on the CNDH consolidated it as an OMBUDSMAN and remarkably increased the instruments for facing up to this responsibility.

Briefly, progress might be summarized in the following way:

A) The Commission stopped being a decentralized agency and became an autonomous one, therefore enjoying its own legal identity and property.

B) The President of the Republic will appoint the Chairman of the CNDH, subject to the approval of the Senate, or during parliamentary recesses, the Permanent Commission of Congress. The term of office for the Chairman of the Commission shall be four years, after which he or she may only be appointed for one more term.

C) The members of the Commission's Council will be appointed in the same way as their Chairman.

D) The Chairman of the Commission and the General Visitors enjoy immunity in relation to actions carried out in the exercise of their functions.

E) In general, the procedure for dealing with complaints, is the outcome of the CNDH's nearly three years of experience.

F) The National Commission, through its Chairman and after prior consultation with the Council, may decline its competence in a particular case whenever it is deemed necessary in order to preserve the institution's autonomy and moral authority.

G) The General Visitors have the power to request at any time that precautionary or preventive measures should be taken in order to avoid irreparable violations of Human Rights.

H) The Chairman of the Commission, the General Visitors and the Assistant Visitors will have public notarial power.

I) The Chairman of the Commission must send an annual report to the Congress of the Union and to the President on the activities carried out during the respective period. This report is to receive wide public dissemination. No authority or public servant may give the National Commission instructions on this report.

With regard to the structure of the National Commission, the law now in force takes up the good points of the original Decree setting up the Commission and its Internal Rules and Regulations. Thus, the purely administrative structure which serves as a support and for the Chairman of the CNDH is complemented by:

a) Up to 5 General Visitors, whose responsibility consists essentially of receiving and admitting the complaints; using the mechanisms of conciliation to bring about immediate resolutions, carrying out the investigations and studies that each complaint deserves and preparing draft recommendations or non—responsibility documents.

b) An Executive Secretary, in charge of relations with national and international non—governmental Human Rights organizations; carrying out studies on international Human Rights treaties and conventions; preparing drafts of bills and regulations; collaborating in the preparation of the annual report and the special reports whenever required and managing the collection of documents.

c) The Technical Secretary of the Council, whose responsibility is centered on assisting the CNDH's collegiate body.

5.— Achievements and challenges of the CNDH

There is no doubt that during these nearly three years of work the National Commission has made significant progress, although there is still much more to be done if there is the wish to reach the levels of management and administration of justice that Mexican society demands.

Undoubtedly, Human Rights are now the subject of much more open, wide and informed debate on the part of the general public. Both individuals and groups have shown that they are absolutely willing to make denouncements even though they may be damaging. Little by little, the authorities changed theirway of speaking about this subject and instead of systematically denying that violations of Human Rights may and in fact do take place, they now accept the existence of irregularities and also show willingness to correct and remedy this situation.

More than words, the objectivity of figures can be a good indicator of what the Commission has achieved up to now.

A) During its nearly three years of work, the CNDH recorded a total of 17,757 complaints, of which 13,602 were concluded, resolving 76.60 % of them. Every day, more and more people come to ask for help from the CNDH. In the last six months, the Commission received on average 25,32 complaints a day, counting Saturdays and Sundays. In the month of June of 1992, alone, the Commission received more complaints than in its first six months of existence.

Fortunately, not all of these complaints are in fact about violations of Human Rights. Almost 50% of them are about facts that cannot be classified as such. In these cases the Commission provides legal assistance.

The increase in the number of complaints does not mean that there are more violations of Human Rights, but rather that society places more trust and belief in the work undertaken by the institution.

B) During these nearly three years, the CNDH has served 482 Recommendations and 196 Non—Responsibility Documents. Of the 482 Recommendations served, 174 have been accepted and totally complied with, 264 have been accepted and partially complied with, 19 are in the stage of being contested, 11 were not accepted and one, although accepted, received an unsatisfactory response, 8 of these recommendations have been accepted on time to present evidence; 15 are accepted without fulfillment evidences.

The 482 Recommendations referred to very varied violations ofHuman Rights: 129 of them had to do with violations of a penitentiary character; 73 with shortcomings in the preparation of a preliminary verification; 56 with illegal arrests or detentions; 36 with torture; 15 with attacks on journalists; 41 with failure to execute arrest warrants; 11 with persons alleged to have disappeared; 6 were of an ecological nature; 9 were on irregularities in administrative procedures, to mention just the most important ones.

The authorities with the greatest number of Recommendations during these nearly three years of work were: The Attorney General of the Republic, the Attorney General for Justice in the Federal District, the Governor of the State of Mexico, the Governor of the State of Veracruz and the Governor of the State of Tamaulipas.

C) By means of amiable settlement and mediation, the CNDH has managed to close 1,109 complaints, in adition to wich, 926 are at present being processed. This mechanism, without need for a Recommendation, makes it possible to remedy the Human Rignts that have been violated and punish those responsible for them either penally or administratively.

D) Through the intervention of the National Commission, in the last nearly three years a frontal attack has been made on impunity: 723 federal, State or municipal public servants have been sanctioned. The sanctions imposed range from penal action to public reprimand.